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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,685	03/29/2004	John M. Roche	047177-9112	2963
23409	7590	06/01/2005	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			TAPOLCAI, WILLIAM E	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/811,685

Applicant(s)

ROCHE ET AL.

Examiner

William E. Tapolcai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-20, 23, 24, 26-34, 37, 38, 40-46, 49-51 and 53-60 is/are rejected.
- 7) ☒ Claim(s) 8, 21, 22, 25, 35, 36, 39, 47, 48, 52, 61 and 62 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20040503, 20041025
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: IDS of 20040329

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, 9-15, 23, 24, 26-28, 30, 37, 38, 40-42, 49-51, and 53-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balk et al in view of Hoffman. Balk et al discloses the claimed invention except for the linear compressor. Hoffman teaches a refrigeration system that uses a linear compressor 40. See column 3, lines 57-61. It would be obvious to substitute, for the compressor 18 used in Balk et al, a linear compressor as taught in Hoffman, for the purpose of reducing the bearing load and friction losses and resulting in higher efficiencies than those of conventional compressors.

3. Claims 16-20, 29, 31-34, 43-46, and 57-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balk et al in view of Hoffman as applied to claim 1 above, and further in view of Nash. Balk et al as modified by Hoffman above discloses the claimed invention except for the sensor. Nash teaches a merchandiser which has environmental sensors 44 and 48. The sensors can be temperature or pressure. See column 2, lines 43-46. It would be obvious to provide Balk et al with sensors, in view of Nash, for the purpose of more precisely controlling the merchandiser.

4. Claims 8, 21, 22, 25, 35, 36, 39, 47, 48, 52, 61, and 62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in

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independent form including all of the limitations of the base claim and any intervening claims.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Tapolcai whose telephone number is (571) 272-4814. The examiner can normally be reached on Mon. - Thurs., 6:30 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William E. Tapolcai  
Primary Examiner  
Art Unit 3744

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May 19, 2005